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Attorneys for Defendant
RUF US, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RECYCLING SPECIALISTS, INC., a California
corporation,

Plaintiff,

v.

RUF US, INC. dba RUF BRIQUETTING
SYSTEMS, an Ohio corporation; DOES 1-100
inclusive,

Defendants.

Case No.

**DECLARATION OF MELINDA M.
MORTON IN SUPPORT OF
DEFENDANT RUF US, INC.'S
NOTICE OF REMOVAL OF ACTION
TO DISTRICT COURT**

[Removed from Santa Clara County
Superior Court, Case No. 18CV328097]

1 I, Melinda M. Morton, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California. I am a
3 partner with the law firm of Procopio, Cory, Hargreaves & Savitch LLP, counsel for Defendant
4 RUF US, Inc. in the above-captioned action. The following statements are based on my own
5 personal knowledge, with the exception of those matters stated on information and belief, and if
6 called as a witness, I could and would competently testify thereto.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of the civil case cover sheet,
8 summons, and the complaint filed in the action *Recycling Specialists, Inc. v. RUF US, Inc dba RUF*
9 *BRIQUETTING SYSTEMS; Does 1 through 100, inclusive*, Case No. 18CV328097 filed May 10,
10 2018, in the Superior Court in the State of California for the County of Santa Clara.

11 I declare under penalty of perjury under the laws of the United States and the State of
12 California that the foregoing is true and correct. Executed on this 14th day of June, 2018 at
13 Palo Alto, California.

14 /s/ Melinda M. Morton
15 Melinda M. Morton
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EXHIBIT 1

**TO DECLARATION OF MELINDA M. MORTON
IN SUPPORT OF DEFENDANT RUF US, INC.'S
NOTICE OF REMOVAL OF ACTION TO
DISTRICT COURT**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William L. Bretschneider Edward A. Kraus Silicon Valley Law Group One North Market Street, Suite 200 San Jose, CA 95113 TELEPHONE NO.: (408) 573-5700 FAX NO.: 408-573-5701		Electronically Filed by Superior Court of CA, County of Santa Clara, on 5/10/2018 3:26 PM Reviewed By: E. Fang Case #18CV328097 Envelope: 1506632	
ATTORNEY FOR (Name): <u>Recycling Specialists, Inc.</u>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:			
CASE NAME: <u>Recycling Specialist, Inc. v. Ruf US, Inc., et al</u>			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 18CV328097
		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 10, 2018

 William L. Bretschneider
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUMMONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: RUF US, INC. dba RUF BRIQUETTING
(AVISO AL DEMANDADO): SYSTEMS; Does 1 through 100,
inclusive

E-FILED
5/10/2018 3:26 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
18CV328097
Reviewed By: E. Fang
Envelope: 1506632

YOU ARE BEING SUED BY PLAINTIFF: RECYCLING SPECIALISTS,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): INC.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court
191 N. First Street

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Edward A. Kraus SBN 162043 (408) 573-5700 408-573-5701

Silicon Valley Law Group

One North Market Street Clerk of Court

San Jose, CA 95113

DATE: 5/10/2018 3:26 PM

Clerk, by E. Fang, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): RUF US, Inc. dba RUF Briquetting Systems
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



E-FILED
 5/10/2018 3:26 PM
 Clerk of Court
 Superior Court of CA,
 County of Santa Clara
 18CV328097
 Reviewed By: E. Fang

Edward A. Kraus, Esq. (SBN 162043)
 William L. Bretschneider, Esq. (SBN 144561)
 SILICON VALLEY LAW GROUP
 One North Market Street, Suite 200
 San Jose, CA 95113
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 Fax: 408-573-5701
ekraus@svlg.com
wlb@svlg.com

Attorneys for Plaintiff
 RECYCLING SPECIALISTS, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

RECYCLING SPECIALISTS, INC.) Case No.: 18CV328097

Plaintiff,)

v.)

RUF US, INC. dba RUF BRIQUETTING)
 SYSTEMS; DOES 1 through 100,)
 inclusive)

Defendants,)

**COMPLAINT FOR DAMAGES FOR
 BREACH OF CONTRACT; BREACH OF
 IMPLIED WARRANTIES OF FITNESS
 AND MERCHANTABILITY;
 NEGLIGENT MISREPRESENTATION;
 FRAUD; AND UNFAIR COMPETITION
 (CAL. B&P §17200 *et seq.*)**

Plaintiff, RECYCLING SPECIALISTS, INC. ("RSI"), a California corporation, alleges
 as follows:

PRELIMINARY ALLEGATIONS

1. RSI is a California corporation duly organized and in good standing, with its
 principal place of business in Santa Clara County, California.

2. RSI is informed and believes, and thereon alleges, that Defendant, RUF US,
 INC. ("RUF"), is an Ohio corporation doing business as Ruf Briquetting Systems. RSI is
 further informed and believes, and thereon alleges, that Defendant RUF is in the business of
 manufacturing and selling industrial briquetting systems used to recycle and reclaim scrap
 metal, and has made substantial sales of its products, including the products at issue, within the
 State of California.

**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
 WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
 FRAUD; AND UNFAIR COMPETITION**

1 3. RSI is informed and believes, and thereon alleges, that Defendants DOES 1
2 through 100 are business entities of a form unknown to RSI, duly authorized to do business, and
3 doing business, within the State of California.

4 4. RSI is ignorant of the true names and capacities of Defendants sued herein as
5 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
6 RSI will amend the Complaint to allege their true names and capacities when ascertained. RSI
7 is informed and believes, and thereon alleges, that each of said fictitiously named defendants is
8 in some manner responsible for the occurrences herein alleged, and that RSI's damages as
9 herein alleged were proximately caused by said defendants. Whenever reference is made to
10 Defendant RUF, such reference shall include all defendants, including DOES 1 through 100.

11 5. RSI is informed and believes, and thereon alleges, that at all times mentioned
12 herein, each of said defendants was the agent and/or employee of each of the remaining
13 defendants, and in doing the things hereinafter alleged, was acting within the scope of such
14 agency and/or employment, and that each defendant ratified and approved the acts alleged to
15 have been done by each of the remaining defendants.

16 6. As described more fully below, on or about April 3, 2017, RSI entered into
17 written contracts with Defendant RUF (the "Contracts"), to purchase a briquetting machine (the
18 "Briquetter") and a floor-mounted chip hopper (the "Hopper") (the Briquetter and the Hopper
19 are collectively referred to herein as the "Briquetting System"), both of which were
20 manufactured and sold by Defendant RUF. True and correct copies of the Contracts are attached
21 hereto as Exhibits A and B.

22 7. As an inducement for RSI to enter into the contracts to purchase the Briquetting
23 System, Defendant RUF represented to RSI that, among other things, Defendant RUF could
24 configure and customize the Briquetting System in RSI's business, based on RSI's user-specific
25 needs, such that RSI's use of the Briquetting System would increase the value of RSI's residual
26 metals and recover the expensive cutting fluids used by RSI to cut scrap metal. RUF further
27 represented that use of the Briquetting System could pay for itself in 18 months or less.

28 8. As further inducement for RSI to enter into the Contracts to purchase the

**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
FRAUD; AND UNFAIR COMPETITION**

1 Briquetting System, Defendant RUF represented to RSI that the residual moisture content of the
2 briquettes produced by the Briquetting System would be between two and three percent, which
3 would have a positive impact on RSI's overall profitability resulting from its use of the
4 Briquetting System. A key reason for RSI's purchase of the Briquetting System was the
5 representation that the briquette's residual moisture content would be between two
6 and three percent. This is the required moisture content to sell the resulting briquettes at a
7 higher price.

8 9. After RSI entered into the Contracts, Defendant RUF installed the Briquetting
9 System at RSI's business located in San Jose, California.

10 10. Contrary to Defendant RUF's representations to RSI that the Briquetting System
11 would yield briquettes with residual moisture content between two and three percent, the actual
12 residual moisture content of the briquettes produced from the Briquetting System installed by
13 Defendant RUF has been much higher than three percent. Despite RSI's repeated requests to
14 Defendant RUF for support, Defendant RUF has been unable to configure the Briquetting
15 System to meet the stated moisture content of two to three percent.

16 11. In addition to yielding briquettes with unsatisfactory residual moisture content,
17 the Briquetting System has broken down on multiple occasions since being installed by
18 Defendant RUF. In response to RSI's complaints and requests for assistance, Defendant RUF
19 has attempted to repair the Briquetting System, and has also simply instructed RSI to make
20 repairs to the Briquetting System itself. None of these efforts have resulted in a permanent and
21 satisfactory repair of the Briquetting System.

22 **JURISDICTION AND VENUE**

23 12. The damages alleged by RSI herein arise from the herein-described breach of the
24 Contracts and the implied warranties of merchantability and fitness for use by Defendant RUF,
25 Defendant RUF's misrepresentations to RSI about the capabilities of the Briquetting System
26 and Defendant RUF's unfair competition in violation of the California Business and Professions
27 Code Section 17200 et. seq. The damages sustained by RSI exceed the minimum jurisdictional
28 amounts of this Court.

**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
FRAUD; AND UNFAIR COMPETITION**

1 13. The Briquetting System, which is the subject matter of this action, was installed
 2 by Defendant RUF at RSI's principal place of business in San Jose, California in the County of
 3 Santa Clara and it remains located in San Jose, California in the County of Santa Clara. The
 4 Contracts that are the subject of this action were entered into in San Jose, California in the
 5 County of Santa Clara. Thus, venue is proper in the California Superior Court, County of Santa
 6 Clara.

7 **FIRST CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 (Against RUF and DOES 1 through 100)

10 14. RSI hereby realleges and incorporates by reference paragraphs 1 through 13
 11 above as if fully set forth herein.

12 15. As alleged above, Defendant RUF has materially breached the Contracts in that
 13 RSI did not receive it's bargained for exchange of consideration. Specifically, the Briquetting
 14 System has broken down on multiple occasions, and despite multiple requests from RSI, and
 15 resulting attempts by Defendant RUF to repair the Briquetting System, the Briquetting System
 16 has never operated as intended and it has never yielded briquettes from RSI's scrap metal with
 17 an acceptable residual moisture content of between two and three percent, or less.

18 16. RSI has performed all of its obligations under the Contracts save and except
 19 those obligations that have been prevented or excused by Defendant RUF's breaches.

20 17. As a result of the breaches of the Contracts by Defendant RUF and Does 1
 21 through 100, as set forth above, RSI has sustained and will continue to sustain damages in an
 22 amount to be proven at trial.

23 WHEREFORE, RSI prays for judgment against Defendant RUF and DOES 1 through
 24 100 as set forth below.

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**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
 WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
 FRAUD; AND UNFAIR COMPETITION**

SECOND CAUSE OF ACTION

**BREACH OF IMPLIED WARRANTIES OF
MERCHANTABILITY AND FITNESS FOR USE**

(Against RUF and DOES 1 through 100)

18. RSI hereby realleges and incorporates by reference paragraphs 1 through 17 above as if fully set forth herein.

19. As alleged above, Defendant RUF entered into the Contracts, or otherwise agreed to provide the Briquetting System to RSI.

20. Defendant RUF impliedly warranted that the Briquetting System would be of merchantable quality and reasonably fit for its intended purpose, and that the Briquetting System would yield briquettes made from scrap metal with a residual moisture content of between two and three percent.

21. RSI was in privity with Defendant RUF as alleged above.

22. Defendant RUF has breached the above-referenced warranties in that the Briquetting System was not of merchantable quality or fit for its intended purpose, and despite multiple request from RSI, and resulting attempts by Defendant RUF to repair the Briquetting System, the Briquetting System never operated as intended and never yielded briquettes from RSI's scrap metal with an acceptable moisture content below three percent.

23. RSI has provided notice to Defendant RUF of its repeated failure to meet the above described warranties.

24. As a result of the breaches of warranty by Defendant RUF and Does 1 through 100, as set forth above, RSI has suffered damages in an amount to be shown according to proof at trial, but not limited to, repair and replacement of defective products, loss of income, and other incidental and consequential damages.

WHEREFORE, RSI prays for judgment against Defendant RUF and DOES 1 through 100 as set forth below.

///

**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
FRAUD; AND UNFAIR COMPETITION**

THIRD CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Against Defendant RUF and DOES 1 through 100)

25. RSI hereby realleges and incorporates by reference paragraphs 1 through 24 above as if fully set forth herein.

26. Before entering into the Contracts, Defendant RUF represented to RSI that the Briquetting System would yield briquettes from RSI's scrap metal with a residual moisture content of between two and three percent, which, according to Defendant RUF, would have a positive impact on RSI's overall profitability resulting from its use of the Briquetting System. The representations made by Defendant RUF as aforesaid were not true, and Defendant RUF had no reasonable grounds for believing the representations were true when it made them.

27. Relying upon Defendant RUF's representations, RSI entered into the Contracts and made payments to Defendant RUF totaling \$150,000 upon presentation of invoices by Defendant RUF, despite the fact that acceptable residual moisture content levels in the briquettes yielded by the Briquetting System not having been achieved. In fact, acceptable residual moisture content levels were never achieved by the Briquetting System.

28. As a result of the misrepresentations by Defendant RUF and Does 1 through 100, as set forth above, RSI has sustained and will continue to sustain damages in an amount to be proven at trial.

WHEREFORE, RSI prays for judgment against Defendant RUF and DOES 1 through 100 as set forth below.

FOURTH CAUSE OF ACTION

FRAUD

(Against Defendant RUF and DOES 1 through 100)

29. RSI hereby realleges and incorporates by reference paragraphs 1 through 28 above as if fully set forth herein.

30. Defendant RUF, in doing the acts alleged herein and as stated above, acted with the intent to deceive or defraud Plaintiff.

COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION; FRAUD; AND UNFAIR COMPETITION

31. Before entering into the Contracts, Defendant RUF materially represented to RSI that the Briquetting System would yield briquettes from RSI's scrap metal with a residual moisture content of between two and three percent, which, according to Defendant RUF, would have a positive impact on RSI's overall profitability resulting from its use of the Briquetting System. RSI reasonably relied on the representations made by Defendant RUF to its detriment, as Defendant RUF's representations set forth above were not true, and Defendant RUF knew that the representations were untrue when it made them and knew that RSI would rely on such representations to its detriment in making the decision to purchase the Briquetting System.

32. As a direct and proximate result of the fraudulent conduct of Defendant RUF and Does 1-100, RSI has suffered substantial, actual and consequential damages in an amount in excess of \$150,000 and according to proof.

33. Defendant RUF and Does 1-100, and each of them, acted with malice, oppression and/or fraud as defined by the California Civil Code in the State of California. The wrongful acts herein alleged constitute despicable conduct subjecting RSI to a cruel and unjust hardship, and have been undertaken knowingly, maliciously, fraudulently, oppressively, with intent to injure RSI, and in conscious disregard of RSI's rights, thereby entitling RSI to recover an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendant RUF and DOES 1 through 100 as hereinafter set forth.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION (CAL. B&P §17200 *et seq.*)

(Against Defendant RUF and DOES 1 through 100)

34. RSI hereby realleges and incorporates by reference paragraphs 1 through 33 above as if fully set forth herein.

35. RSI is informed and believes, and thereon alleges, that Defendant RUF does substantial business in California.

36. The above described acts of Defendant RUF and Does 1-100 are acts of unfair competition, in violation of regular business practices and constitute unfair, deceptive, untrue or

COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION; FRAUD; AND UNFAIR COMPETITION

1 misleading advertising within the meaning of Business and Professions Code §17200 et. seq.
2 RSI is informed and believes, and thereon alleges, that the above described conduct was
3 wrongful constituting unfair business acts or practices and done for the purpose of unfairly
4 competing and for the purpose of injuring RSI.

5 37. Therefore, as a direct and proximate result of the conduct of Defendant RUF and
6 Does 1-100, as set forth above, Plaintiff is entitled to relief, including full restitution and
7 according to proof as allowed by Business and Professions Code §17200 et. seq.

8 WHEREFORE, Plaintiff prays for judgment against Defendant RUF and DOES 1
9 through 100 as hereinafter set forth.

10 **PRAYER**

11 WHEREFORE, RSI prays for judgement against Defendant RUF and DOES 1 through
12 100 as follows:

- 13 a. Compensatory damages according to proof;
- 14 b. Monetary damages due to loss of income and loss of business;
- 15 c. Consequential damages according to proof;
- 16 d. For punitive and exemplary damages determined by the trier of fact;
- 17 e. For restitution to RSI of all sums unlawfully collected by Defendant RUF and
18 DOES 1 through 100 from RSI according to proof, but in any event, in an
19 amount no less than \$150,000
- 20 f. For interest and pre-judgment interest at the maximum legal rate;
- 21 g. Costs of suit;
- 22 h. For such other and further relief as this Court deems just and proper.

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**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
FRAUD; AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

RSI hereby demands a jury trial on all the issues in this case.

Dated: May 10, 2018

SILICON VALLEY LAW GROUP

By: /s/ William L. Bretschneider
EDWARD A. KRAUS
WILLIAM L. BRETSCHNEIDER
Attorneys for Plaintiff,
Recycling Specialists, Inc.

**COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT; BREACH OF IMPLIED
WARRANTIES OF FITNESS AND MERCHANTABILITY; NEGLIGENT MISREPRESENTATION;
FRAUD; AND UNFAIR COMPETITION**

EXHIBIT A



Sales Contract

Quote To Name	Recycling Specialists	Created Date	4/3/2017
Bill To	1720 Old Bayshore Hlway San Jose, CA 95112	Ship To Name	Recycling Specialists Inc.
Contact Name	Howard Misle		
Phone	(702) 277-2640	Email	hmisle@aol.com

Design Specifications

Material Type	Aluminum	Required Capacity	Up to 3,300 pounds per hour
Material Size	Broken chips	Coolant Type	Water soluble
Bulk Density	Less than 20 pounds/cu. ft.	Test Report #	None

Standard RUF 55/1700/150x120 Machine Specifications

Input voltage: 480 Volt, 3 phase, 60 Hz
 Control voltage: 24 Volt DC
 Control system: Siemens PLC model S7-1200 (CPU1214C) with Touch Panel Siemens TP700
 Hydraulic power unit motor: 75 HP
 Dual axial piston pumps
 Main press cylinder: 14" diameter, 350 tonnes,
 Specific pressure: 24,000 Psi
 Hopper opening: 23 5/8" x 39 3/8"
 Machine production: up to 480 briquettes/hour
 Briquette size: 6" x 5"
 Foot print: 130" x 96" x 87"
 Weight: 13,200 pounds
 Paint color: Machine RAL 7022, Electrical Panel 7035
 Warranty: 24 months, not to exceed 27 months from date of delivery. Wear part such as mold, mold guides, main piston, cylinder seals, ect. are not covered by warranty.

Line Item Description	Quantity	Sales Price	Total Price
RUF 55/1700/150x120 Briquetter - Machine Number 2461	1.00	\$315,000.00	\$315,000.00

Delivery & Terms

Delivery	In Stock	Inco Terms	Ex Works RUF, Elyria, OH
Payment Terms	\$100,000 due upon placement of order, balance \$215,000 due upon completion of start-up assistance, not to exceed 30 days from date of shipment.		

Ruf Briquetting Systems, 771 Sugar Lane, Elyria, OH 44035 (440) 779-2747
www.ruf-briquetter.com



Sales Contract

Notes

Optional Equipment Included The control cabinet will have a multi-color signal light with horn mounted to the top. The briquetter feed hopper will have large opening (23.5" x 39") and side wall extensions. A Brinkmann electrical emulsion pump and filling nozzle with overflow sensor will be provided for recovered coolant. A spray unit will be provided to prevent cold welding. All removeable safety covers will have Pilz safety switches.

Additional Information This quotation is for our stock machine #2461


All Removable Safety covers require a tool to remove. Some companies require the addition of safety switches on all removable covers. Unless specified above in the Option Equipment Included section safety switches are not included. Safety switches are available upon request.

Two (2) days of briquetter start-up assistance and operational/maintenance training by a factory trained service technician is included. Mechanical and electrical installation of the briquetter and all related equipment is by others.

If a briquetter test number is not referenced in the design specifications, the selection of the briquetter is based upon our experience with similar material. True machine capacity and the briquetability of the material can only be determined by running a briquetter test. Without a successful briquetter test, the customer assumes full responsibility for briquette results and machine capacity. Briquetter test are free and available upon request.

If you have any further questions, please do not hesitate to contact us. We will be glad to answer your questions and provide further information at any time.

Seller:


RUF US Inc.

Bob Kimber
Metal Product Manager
610-806-6701
bob@ruf-briquetter.com

Buyer:

Howard Misle
Recycling Specialists Inc.

EXHIBIT B



Sales Contract

Quote Name	Q170403ABK	Created Date	4/3/2017
Quote To Name	Recycling Specialists, Inc.	Ship To Name	Recycling Specialists Inc.
Bill To	1720 Old Bayshore Hiway San Jose, CA 95112	Ship To	1720 Old Bayshore Highway San Jose, CA 95112
Contact Name	Howard Misle	Email	hmisle@aol.com
Phone	(702) 277-2640	Expiration Date	4/30/2017

Machine Specifications

Volume: 6.5 cubic meters
 Agitator motor: 3/4 Hp
 Screw motor: 2 Hp (2)
 Includes tramp metal screen and coolant/oil pan.
 Warranty: 24 months, not to exceed 27 months from date of shipment

Line Item Description	Quantity	Sales Price	Total Price
Floor mounted chip hopper with inclined double screw, 8.5 cubic yard capacity hopper. Complete with coolant pan and Brinkmann electrical emulsion pump.	1.00	\$45,125.00	\$45,125.00

Delivery & Terms

Delivery	14-16 weeks	Incoterms	DDP Customer site
Payment Terms	30% with placement of order, 60% upon notification of readiness to ship, and 10% after start up, not to exceed 30 days after delivery		

Notes

Optional Equipment The hopper will have coolant pan and Brinkmann electrical emulsion pump.

Seller: RUF US, Inc.
 Date: 4/3/17

Buyer:
 Date: _____

Bob Kimber
 Metal Product Manager
 810-806-6701
bob@ruf-briquetter.com

Recycling Specialists Inc.
 Recycling Specialists Inc.